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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	Menon et al.
Serial No:	09/723,459
Filed:	November 28, 2000
For:	ANTI-AGING COSMETIC COMPOSITION AND METHOD OF APPLICATION
Examiner:	C. Ostrup
Art Unit:	1619
Atty. Docket:	680.0041USU

DECLARATION UNDER 37 C.F.R. 1.131

I, Gopinathan K. Menon, declare the following:

That I received a doctorate degree (Ph.D.) from the University of Baroda (Gujarat, India) in 1974. I have been working in the field of skin biology for twenty years. I have been employed by Avon Products Co. for nine years.

That I and my coinventor conceived of applying compositions having crape myrtle extract to the skin in the United States prior to March 7, 2000. This invention is described in the attached Information Disclosure Document.

That I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section

1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

_____ _____

Gopinathan K. Menon Date

SC 41

Avon Place

AVON PRODUCTS, INC.

Suffern, NY 10901

COPY OF PAPERS ORIGINALLY FILED

INVENTION DISCLOSURE DOCUMENT

1. **NAME(S) OF INVENTOR(S).**
Isabella L. Morelli-Abrams, Gopinathan K. Menon, Ph.D

2. **SHORT TITLE OF INVENTION.**
USE OFCRAPE MYRTLE EXTRACT IN TOPICAL TREATMENT OF SKIN, MUCOUS MEMBRANES AND HAIR.

3. **PURPOSE AND DETAILED DESCRIPTION OF THE INVENTION.**
Boost the metabolism of skin cells with Crape Myrtle Extract and lead to anti-aging benefits of the skin. This can also be combined with other anti-oxidants, like Vit. E, Vit. C, Vitamin A (Retinol) and bioflavonoids to enhance anti-aging skin benefits. There could also be synergy with AHAs.

4. **HOW DOES THE INVENTION DIFFER FROM THE PRIOR ART; WHAT ARE ITS ADVANTAGES OR IMPROVEMENTS; WHAT ASPECT OF THE INVENTION IS NOVEL OR UNEXPECTED?**
Prior art has shown Crape Myrtle having anti-diabetic effects when taken internally by lowering the blood sugar level in diabetics. Since it has hypoglycemic effects on diabetics, we hypothesize that it will improve glucose metabolism in the skin improving skin's condition and enhance anti-aging benefits.

Secondly, aging is also caused by known enzymatic glycation of proteins by decreasing available free sugar in the skin. Crape Myrtle Extract will help in preventing the glycation in the skin.

In vitro assays have shown direct effect in skin cells inducing cell proliferation in fibroblasts and keratinocytes.

5. **CONCEPTION DATE. (PLEASE PROVIDE DAY, MONTH AND YEAR; IDENTIFY NOTEBOOK ENTRIES OR OTHER WRITTEN RECORDS.)**
In lab notebook # 7512-70 of Isabella Morelli-Abrams.

6. **REDUCTION TO PRACTICE, (WHEN WAS THE FORMULATION FIRST MADE; PLEASE PROVIDE DAY, MONTH AND YEAR; IDENTIFY NOTEBOOK ENTRIES OR OTHER WRITTEN RECORDS.)**
No formulations containing Crape Myrtle done yet.

7. **WHEN WAS THE INVENTION FIRST DISCLOSED TO OTHERS? (STATE WHEN, WHERE AND TO WHOM AND IDENTIFY APPROPRIATE RECORDS.)**
to Eugenia Theophilus and the Anti-Aging Team Members

8. **STATE WHEN AND WHERE THE INVENTION HAS BEEN USED OR SOLD. WAS THIS USE OR SALE EXPERIMENTAL OR SUBJECT TO SECRECY OBLIGATIONS?**
This invention has not been used or sold as of this date.

9. **HAVE YOU CONDUCTED A LITERATURE SEARCH OF PRIOR ART PATENTS AND PRINTED PUBLICATIONS? WHAT IS THE CLOSEST PRIOR ART?**
Search was done on

10. WHAT IS THE COMMERCIAL APPLICATION FOR THIS INVENTION?
The commercial application of this invention is for the treatment of various cosmetic/skin or hair conditions to enhance anti-aging benefits.

Date and signature of inventor(s):

Isabella L. Morelli-Abrams

Gopinathan . K. Menon

Read and understood:

Christina Wilson

Witness Date

[illegible] WILSON
Notary Public, State of New York
No. [illegible]
Certified in Rockland County
Commission Expires

FYI — MPEP

CRITICAL PERIOD FOR ESTABLISHING DILIGENCE BETWEEN ONE WHO WAS FIRST TO CONCEIVE BUT LATER TO REDUCE TO PRACTICE THE INVENTION

The critical period for diligence for a first conceiver but second reducer begins not at the time of conception of the first conceiver but just prior to the entry in the field of the party who was first to reduce to practice and continues until the first conceiver reduces to practice. *Hull v. Davenport*, 90 F.2d 103, 105, 33 USPQ 506, 508 (CCPA 1937) ("lack of diligence from the time of conception to the time immediately preceding the conception date of the second conceiver is not regarded as of importance except as it may have a bearing upon his subsequent acts"). What serves as the entry date into the field of a first reducer is dependent upon what is being relied on by the first reducer, e.g., conception plus reasonable diligence to reduction to practice (*Fritsch v. Lin*, 21 USPQ2d 1731, 1734 (Bd. Pat. App. & Inter. 1991), *Emery v. Ronden*, 188 USPQ 264, 268 (Bd. Pat. Inter. 1974)); an actual reduction to practice or a constructive reduction to practice by the filing of either a U.S. application (*Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975)) or reliance upon priority under 35 U.S.C. 119 of a foreign application (*Justus v. Appenzeller*, 177 USPQ 332, 339 (Bd. Pat. Inter. 1971) (chain of priorities under 35 U.S.C. 119 and 120, priority under 35 U.S.C. 119 denied for failure to supply certified copy of the foreign application during pendency of the application filed within the twelfth month)).

THE ENTIRE PERIOD DURING WHICH DILIGENCE IS REQUIRED MUST BE ACCOUNTED FOR BY EITHER AFFIRMATIVE ACTS OR ACCEPTABLE EXCUSES

An applicant must account for the entire period during which diligence is required. *Gould v. Schawlow*, 363 F.2d 908, 919, 150 USPQ 634, 643 (CCPA 1966) (Merely stating that there were no weeks or months that the invention was not worked on is not enough.); *In re Harry*, 333 F.2d 920, 923, 142 USPQ 164, 166 (CCPA 1964) (statement that the subject matter "was diligently reduced to practice" is not a showing but a mere pleading). A 2-day period lacking activity has been held to be fatal. *In re Mulder*, 716 F.2d 1542, 1545, 219 USPQ 189, 193 (Fed. Cir. 1983) (37 CFR 1.131 issue); *Fitzgerald v. Arbib*, 268 F.2d 763, 766, 122 USPQ 530, 532 (CCPA 1959) (Less than 1 month of inactivity during critical period. Efforts to exploit an invention commercially do not constitute diligence in reducing it to practice. An actual reduction to practice in the case of a design for a three-dimensional article requires that it should be embodied in some structure other than a mere drawing.); *Kendall v. Searles*, 173 F.2d 986, 993, 81 USPQ 363, 369 (CCPA 1949) (Diligence requires that applicants must be specific as to dates and facts.).

The period during which diligence is required must be accounted for by either affirmative acts or acceptable excuses. *Rebstock v. Flouret*, 191 USPQ 342, 345 (Bd. Pat. Inter. 1975); *Rieser v. Williams*, 225 F.2d 419, 423, 118 USPQ 96, 100 (CCPA 1958) (Being last to reduce to practice, party cannot prevail unless he has shown that he was first to conceive and that he exercised reasonable diligence during the critical period from just prior to opponent's entry into the field); *Griffith v. Kanamaru*, 816 F.2d 624, 2 USPQ2d 1361 (Fed. Cir. 1987) (Court generally reviewed cases on excuses for inactivity including vacation extended by ill health and daily job demands, and held lack of university funding and personnel are not acceptable excuses.); *Litchfield v. Eigen*, 535 F.2d 72, 190 USPQ 113 (CCPA 1976) (budgetary limits and availability of animals for testing not sufficiently described); *Morway v. Bondi*, 203 F.2d 741, 749, 97 USPQ 318, 323 (CCPA 1953) (voluntarily laying aside inventive concept in pursuit of other projects is generally not an acceptable excuse although there may be circumstances creating exceptions); *Anderson v. Crowther*, 152 USPQ 504, 512 (Bd. Pat. Inter. 1965) (preparation of routine periodic reports covering all accomplishments of the laboratory insufficient to show diligence); *Wu v. Jucker*, 167 USPQ 467, 472-73 (Bd. Pat. Inter. 1968) (applicant improperly allowed test data sheets to accumulate to a sufficient amount to justify interfering with equipment then in use on another project); *Tucker v. Natta*, 171 USPQ 494,498 (Bd. Pat. Inter. 1971) ("[a]ctivity directed toward the reduction to practice of a genus does not establish, *prima facie*, diligence toward the reduction to practice of a species embraced by said genus"); *Justus v. Appenzeller*, 177 USPQ 332, 340-1 (Bd. Pat. Inter. 1971) (Although it is possible that patentee could have reduced the invention to practice in a shorter time by relying on stock items rather than by design-